

	<p align="center">Department of Administration</p> <p align="center">State of Montana</p> <p align="center">Issued by: The Risk Management & Tort Defense Division</p> <p>Subject: Tort Liability Insurance Program The state's tort liability insurance program requirements and insurance coverages.</p>	<p>Number: RMTDINS0707</p>
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I. DESCRIPTION

UNDER §2-9-101, MCA, through 2-9-305, MCA, the Department of Administration, Risk Management & Tort Defense Division, administers a comprehensive insurance program on behalf of Montana State Government and defends and indemnifies state agencies and employees in any tort claim for damages arising from the lawful discharge of official duties rendered or which should have been rendered in the course of employment and within the scope of duty. Coverage provided under the state self-insurance plan applies to directors and officers, medical professionals, law enforcement professionals, other licensed professionals, some employment practices, products and operations, vehicle liability, aircraft, airports, and other tort liability. This document provides a broad overview of program requirements for state agencies that participate in the state's tort liability insurance program as well as a summary of insurance coverages. Do not attempt to interpret coverages, limits, or exclusions and apply these to state activities without contacting the Risk Management & Tort Defense Division. Specific exclusions, limits, or coverages may apply.

II. DEFINITIONS

Agency means the State of Montana or any office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality thereof.

Claim means any claim against a governmental entity, for money damages only, which any person is legally entitled to recover as damages because of personal injury or property damage caused by a negligent act or wrongful act or omission committed by any employee of the governmental entity while acting within the scope of his/her employment, under circumstances where the governmental entity, if a private person, would be liable to the claimant for such damages under the laws of the state. For purposes of this section and the limit of liability contained in §2-9-108, all claims which arise or derive from personal injury to or death of a single person, or damage to property of a person, regardless of the number of persons or entities claiming damages thereby, are considered one occurrence.

Division means the Risk Management & Tort Defense Division.

Employee means an officer, employee, or servant of a governmental entity, including elected or appointed officials, and persons acting on behalf of the governmental entity in any official capacity temporarily or permanently in the service of the governmental entity whether with or without compensation but the

term employee shall not mean a person or other legal entity while acting in the capacity of an independent contractor under contract to the governmental entity to which parts 1 through 3 of this section apply. For purposes of this policy, student interns and residents are considered instrumentalities of the state and are covered provided that 1) the internship or residency is in fulfillment of a degree requirement; 2) the sponsor is unable or unwilling to provide coverage in the absence of state's insurance coverage; and 3) the activity that gives rise to the claim is directly associated with the internship.

Personal Injury means any injury resulting from libel, slander, malicious prosecution, or false arrest, any bodily injury, sickness, disease, or death sustained by any person and caused by an occurrence for which the state may be held liable.

Property Damage means any injury or destruction to tangible property including the loss of use thereof, caused by an occurrence for which the state may be held liable.

State means the State of Montana or any office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality thereof.

III. TORT LIABILITY COVERAGES

Tort Claims Seeking Money Damages. The state provides coverage for the immunization, defense, and indemnification of state employees civilly sued for their actions taken within the course and scope of employment (§2-9-305, MCA).

INSURING AGREEMENT

The Risk Management and Tort Defense will bear all reasonable costs to investigate and defend the claim, and pay any damages which are determined to be reasonable through settlement or until final judgment shall have been obtained or until all remedies by appeal, writ, or other legal proceedings have been exhausted.

- A The Risk Management and Tort Defense Division will investigate and settle any claim or suit at its discretion after consultation with the affected agency or employee.
- B No state employee shall: a) make any hold harmless agreements or voluntarily assume any liability in any situation. b) make or contract any settlement of a claim except at his/her own cost and responsibility without the consent of Risk Management and Tort Defense Division.
- C State agencies shall at all times fully cooperate with the division in any claim and shall attend and assist in the preparation and trial of such claim.

IV. EXCLUSIONS

Except as expressly provided or otherwise authorized, the Risk Management & Tort Defense Division does not pay claims arising from the following:

- A. The conduct of an employee upon which a liability claim is based if such conduct constitutes oppression, fraud, or malice, or for any other reason does not arise out of the course and scope of the employee's employment (§2-9-305, MCA).
- B. The conduct of the employee constitutes a criminal offense as defined in Title 45, Chapters 4 through 7.
- C. The employee compromised or settled the claim without the consent of the Risk Management and Tort Defense.
- D. The employee failed or refused to cooperate in the defense of the case.
- E. Any liability arising from the American's with Disabilities Act (ADA), Human Rights Act, or Government Code of Fair Practices.
- F. Fines, penalties, contempt citations or judgments for delayed conformance to a court's order.
- G. Fines or penalties imposed by federal or other regulatory agencies.
- H. Medical treatment costs for persons in state custody unless treatment is for injury caused by a tort committed by an agency or its staff.
- I. Non-torts that do not meet the definition of 'tort' and claims that the division has historically regarded as 'non-tort' in our administration of the Insurance Fund. A list of these "non-tort" claims includes, but is not limited to, the following:
 - 1. Administrative Procedures. Administrative hearings or other proceedings, including judicial review or appeals of agency administrative orders, hearings or rules.
 - 2. "CERCLA" or "CECRA" Cost-Recovery Claims. Claims/actions brought by the United States Government or under state law, by any other person, for recovery of costs incurred in removing or cleaning-up hazardous substances.

V. LIMITS

The state's liability are statutorily defined at \$750,000 per claim/\$1,500,000 per occurrence. In certain federal claims these limits may not apply.

VI. PROGRAM REQUIREMENTS

- a. Early contact and investigation can be critical to loss control. State agencies must report any claim, lawsuit, or mixed claim to us in writing as promptly as practical, preferably within 5 days after having clear notice of it. Accidents resulting in serious injury or death for which an agency or its staff are expected to be blamed must be reported to the division within the next working day. Use telephone or other electronic means for such serious accidents.
- b. State agencies must complete and return annual Risk Exposure Reports by April 15th of each fiscal year.

VII. DEDUCTIBLES

There are no deductibles. However, any other form of valid and collectible insurance besides the state's coverage is considered primary, paying before the state's self-insured coverage applies.

VIII. RIGHT OF RECOVERY

If the Risk Management & Tort Defense Division defends or pays damages on a claim, the division has the right to recover costs or damages from any party in connection with the claim.

IX. SPECIAL SERVICES

- a. State agencies that need coverage for something not mentioned or something excluded or limited by this coverage document, are encouraged to contact the Risk Management & Tort Defense Division. The division or its brokers may be able to form a plan of self-insurance to assist your agency. Any plan must be consistent with §2-9-201, MCA. The division may have to obtain legislative approval for the plan. The division may be able to obtain commercial insurance to meet your needs.
- b. The Risk Management & Tort Defense Division may be able to help you develop a risk control plan that will remove or reduce your need

for coverage.

- c. Division staff are available to consult with you about ways to minimize liability and mitigate damages.

X. PREMIUMS

Each agency's standard biennial premium is its share of actuarially estimated state tort liability loss expense. Each agency's share is based upon paid losses in relation to total state paid losses.

XI. REPORTING CLAIMS

It is recommended that State agencies report a loss no later than 5 business days after it is discovered and fatalities within 24 hours after discovery of the loss. The ***State Report of Incident*** should be completed and sent to the Risk Management & Tort Defense Division. Lawsuits are reported in accordance with rules specified in statute.

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